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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,091	04/04/2002	Lothar Doebling	635.40828X00	4776
20457	7590	11/16/2004		
ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 NORTH SEVENTEENTH STREET SUITE 1800 ARLINGTON, VA 22209-9889				
			EXAMINER LISH, PETER J	
			ART UNIT 1754	PAPER NUMBER

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,091

Applicant(s)

DOEHRING ET AL.

Examiner

Peter J Lish

Art Unit

1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17 and 19-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17 and 19-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 8/20/04 have been fully considered but they are not persuasive. Applicants argue that Roy et al. says nothing about the grain sizes of the radioactive materials or of the amount of fines of radioactive materials. However, while Roy et al. may not explicitly state that the material contains fines having a grain size of less than 250 microns in a proportion of less than 30 wt%, Roy does disclose that the radioactive particles, fibers, and gravel that are added to the mixture have diameters and sizes that are greater than 250 microns. This had led the examiner to the reasonable expectation that the material of Roy et al meets the claimed limitation.

Applicants additionally argue that Roy et al does not disclose the disposing of radioactive graphite. However, the rejection of the previous office action relies upon the combination of Roy et al. and the reference to DE '798, which teaches radioactive graphite particles being disposed of by their inclusion in a cement matrix, much in the same manner of Roy et al.

Applicants additionally argue that Roy et al. teaches the use of a conventional binder and aggregate whereas the applicants teaches the use of an aggregate partially substituted by radioactive materials. However, no difference is seen between the process or casting of Roy et al. and that claimed by the applicants in this regard. The radioactive materials of Roy et al. fill void space that would otherwise be filled by conventional aggregates and are thereby seen to act as aggregates. Additionally, Roy et al. refers to the radioactive material as aggregate.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27 recites that the filling ratio be higher when the radioactive material is substituted for conventional aggregates than the filling ratio for the mixture containing only convention aggregates, however, this limitation is unclear and indefinite as to the basis for comparison. What is the minimum ratio required?

Claim Rejections - 35 USC § 102/103

Claims 17, 19-22, 25-27, and 30-31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Roy et al.

The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Claim Rejections - 35 USC § 103

Claims 17, 19-22, 25-27, and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy et al.

The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Claims 23-24, 29, and 32-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy et al. as applied to claims 17, 19-22, 25-27, and 30-31 above, and further in view of DE 3131798 A1.

The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roy et al. as applied to claims 17, 19-22, 25-27, and 30-31 above, and further in view of Laske et al. (US 4,732,705).

The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 1754

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J Lish whose telephone number is 571-272-1354. The examiner can normally be reached on 9:00-6:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

PL



STUART L. HENDRICKSON
PRIMARY EXAMINER